

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2003

4 (Argued: January 7, 2004

Decided: November 3, 2004)

5 Docket No. 03-6115

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7 WILLIAM E. BUTTS,

8 Plaintiff-Appellant,

9 v.

10 JO ANNE B. BARNHART, Commissioner of Social Security,

11 Defendant-Appellee.

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13 B e f o r e: WINTER, JACOBS, and STRAUB, Circuit Judges.

14 Appeal from an order of the Northern District of New York
15 (Lawrence E. Kahn, Judge) remanding appellant's disability claim
16 to the Social Security Commissioner for further proceedings. We
17 hold that the district court's order was not an abuse of
18 discretion and therefore affirm, but we set a time limit for the
19 completion of further proceedings.

20 EUGENE D. FAUGHNAN, Hinman, Howard &
21 Kattell, Binghamton, New York, for
22 Plaintiff-Appellant.

23
24 SIXTINA FERNANDEZ, Assistant Regional
25 Counsel, Social Security Administration
26 (Lisa de Soto, General Counsel, Barbara
27 L. Spivak, Chief Counsel - Region II, of
28 counsel), for Defendant-Appellee.
29

1 WINTER, Circuit Judge:

2 William E. Butts appeals from Judge Kahn's order remanding
3 Butts' claim for disability benefits to the Social Security
4 Commissioner. The remand directs further proceedings pursuant to
5 "sentence four" of 42 U.S.C. § 405(g) to determine whether
6 adequate jobs exist in the national economy that Butts could
7 perform. Butts asks us to remand only for a calculation of
8 benefits because the Commissioner failed to sustain her burden of
9 showing through the testimony of a vocational expert that there
10 are jobs in the national economy that Butts could perform. The
11 Commissioner agrees that a vocational expert was needed but argues
12 that remand for an evidentiary hearing was within the district
13 court's discretion. We hold that a district court's "sentence-
14 four-remand order" is subject to review for abuse of discretion,
15 that the district court did not abuse its discretion, but that any
16 further proceedings must be completed within a time limit.

17 BACKGROUND

18 Butts is a high-school graduate who worked as an ironworker
19 for a steel fabrication company from 1971 until September 30,
20 1991. At that time he suffered an injury to his back while
21 lifting a heavy piece of steel on the job. Butts has since been
22 treated for back and back-related problems by a host of doctors
23 and has been diagnosed with a number of back conditions, including
24 degenerative disk disease, congenital spinal stenosis, mild

1 displacement of nerve root from disk bulging, moderate thecal sac
2 compression, mild-to-moderate neural foraminal stenosis, mild
3 intermittent radiculitis, and chronic lumbar syndrome and
4 radiculopathy. Butts' problems began to subside in 1993, and a
5 scheduled surgery was cancelled. However, Butts re-injured
6 himself in 1995, and his condition again worsened. Butts' most
7 recent physician, Dr. Kamlesh S. Desai, diagnosed Butts with
8 chronic lumbar syndrome, intermittent left L-4 radiculopathy, and
9 disc degeneration at L5-S1 and L4-5 with facet arthropathy.

10 Butts' job as an ironworker involved lifting up to 100 pounds
11 on a regular basis. His doctors now agree that he can lift no
12 more than half that weight and only from time to time. Based on
13 his diagnoses in 1997 and 1998, Dr. Desai also placed Butts on
14 permanent restrictions, directing him to "[a]void heavier bending,
15 lifting, and twisting activities, prolonged sitting and prolonged
16 driving, as well as prolonged standing in one position."

17 Butts filed his first application for Social Security
18 disability benefits in May, 1996. The application was denied both
19 upon initial determination and upon reconsideration. Butts filed
20 a request for an administrative hearing in connection with the
21 denial of his claim but later withdrew that request. On January
22 1, 1998, Butts filed an amended application for disability
23 insurance benefits. This application was also denied both upon
24 initial determination and upon reconsideration. Butts again

1 requested a hearing before an administrative law judge ("ALJ").
2 At the hearing on January 6, 1999, Butts, then 49 years old,
3 testified that he has trouble standing and sitting for long
4 periods of time and experiences sharp pains while bending and
5 lifting objects. The ALJ denied Butts' claim.

6 In his decision, the ALJ undertook the mandatory five-step
7 sequential evaluation process for evaluating disability
8 determinations. See 20 C.F.R. § 416.920. The ALJ first found
9 that Butts had not engaged in substantial gainful employment since
10 the onset of his impairment. Second, after reviewing the medical
11 evidence, the ALJ concluded that Butts' "back condition has
12 resulted in a significant restriction of his ability to perform
13 basic work activities" therefore constituting a "'severe'
14 impairment." Third, the ALJ determined that Butts' impairment did
15 not qualify under the Social Security Act's "Listing of
16 Impairments" in Appendix 1 to Subpart P of Section 404 of the Act.
17 Had the ALJ found otherwise, Butts would have been deemed disabled
18 without reference to vocational factors such as age, education, or
19 work experience.

20 However, because Butts' impairment did not qualify as a
21 listed impairment under Appendix 1, the ALJ moved to step four of
22 the sequential evaluation to determine Butts' residual functional
23 capacity for his work as an ironworker. Residual functional
24 capacity involves the range of work activities Butts could still

1 perform despite his impairment. Social Security regulations
2 direct the ALJ to consider both objective medical evidence and any
3 other evidence, including statements and reports from Butts and
4 his physicians, relevant to how his impairments and related
5 symptoms affect his ability to work. See 20 C.F.R. § 404.1529.
6 The ALJ reviewed Butts' testimony, the diagnoses and treatment
7 recommendations of his physicians, and the opinion of a state
8 agency review physician. The state agency physician, while not an
9 examining physician, evaluated the evidence and opined that Butts
10 could frequently lift ten pounds, could sit and/or stand for a
11 total of six hours in an eight hour work day, could occasionally
12 climb and balance, but could never stoop, kneel, crouch or crawl.

13 The ALJ concluded that although Butts could no longer perform
14 his prior heavy lifting work -- which includes "exertional"
15 activities -- he retained the residual functional capacity for the
16 full range of light work -- which includes "nonexertional"
17 activities such as bending, kneeling, crouching, and crawling --
18 as well as for sedentary work.¹ In reaching this conclusion the
19 ALJ relied principally upon the state agency review physician's
20 opinion which it found to be supported by the opinions of Butts'
21 treating physicians. Based on Butts' residual functional capacity
22 to perform at most light work, the ALJ determined at step four of
23 the sequential evaluation that Butts was incapable of returning to
24 his former occupation as an ironworker.

1 At step five, the burden shifts to the Commissioner to show
2 that there were a significant number of jobs in the national
3 economy that Butts could perform based on his residual functional
4 capacity, age, education, and prior vocational experience. See 20
5 C.F.R. § 404.1560. However, the Commissioner is not represented
6 at an administrative hearing; rather, the ALJ marshals the
7 evidence and makes the relevant determination. See Seavey v.
8 Barnhart, 276 F.3d 1, 8 (1st Cir. 2001) (citing Sims v. Apfel, 530
9 U.S. 103, 110 (2000)). In Butts' case, the ALJ used criteria from
10 the Social Security Act's table of medical-vocational guidelines,
11 referred to as "grid rules" or "grids," to conclude that Butts was
12 capable of performing other jobs existing in significant numbers
13 in the national economy and therefore did not meet the
14 requirements for disability status. The ALJ did not call a
15 vocational expert to testify as to Butts' ability to perform other
16 jobs but relied exclusively on the grid rules. Butts filed a
17 request for review of the ALJ's decision. On December 8, 2000,
18 the Appeals Council denied Butts' request for review, thus
19 rendering the ALJ's decision the final decision of the
20 Commissioner of Social Security in Butts' case.

21 On January 24, 2001, Butts commenced the present action.
22 Magistrate Judge Homer issued a report and recommendation on
23 December 2, 2002, finding that according to Butts' physicians, he
24 was capable of returning to work, but not to his prior heavy work.

1 Specifically, the magistrate judge found that Butts was limited to
2 jobs where he did not have to bend, twist, stoop, kneel, crouch,
3 crawl or lift heavy objects, and where he could alternate between
4 sitting or standing and walking. On this basis, the magistrate
5 judge held that substantial evidence supported the Commissioner's
6 determination that Butts was able to perform the full range of
7 light and sedentary work. However, because Butts has non-
8 exertional impairments that limit his exertional capabilities, the
9 magistrate judge found that the ALJ erred by relying on the grids
10 and concluded that a vocational expert should have been utilized
11 to determine whether jobs exist in the national economy that Butts
12 is capable of performing. The magistrate judge then recommended a
13 remand for further consideration.

14 The district court adopted the magistrate judge's
15 recommendation. The district court found that while Butts could
16 perform sedentary work, the medical evidence of his limitations
17 such as his inability to bend, twist, stoop, kneel, etc., and the
18 need for him to alternate between sitting and standing, did not
19 support a finding that he could perform the full range of light
20 work.² The district court took particular issue with the ALJ's
21 selective reliance on physicians' reports from only the period
22 before Butts re-injured himself, with the ALJ's incomplete and
23 cursory consideration of more recent treating physicians' reports,
24 and with the ALJ's reliance on the state agency reviewing

1 physician's opinion, which the district court found to be
2 internally inconsistent. The district court agreed with the
3 magistrate judge that the ALJ's application of the grids was
4 inappropriate, and that "given the uncertain state of the record
5 with regard to the availability of jobs in the national economy
6 specific to Butts' limitations . . . remand and not reversal is
7 warranted."³ Accordingly, the district court vacated the
8 Commissioner's decision and remanded the action to the Social
9 Security Commission pursuant to sentence four of 42 U.S.C. §
10 405(g), which provides that "[t]he court shall have power to
11 enter, upon the pleadings and transcript of the record, a judgment
12 affirming, modifying, or reversing the decision of the
13 Commissioner of Social Security, with or without remanding the
14 cause for a rehearing."

15 This appeal followed.

16 DISCUSSION

17 On appeal, neither the Commissioner nor Butts challenge the
18 district court's ruling that Butts cannot perform the full range
19 of light work and may be "disabled" within the meaning of the Act
20 depending on whether work is available in the national economy for
21 one with his limitations. The parties further agree that whether
22 Butts is disabled is unknown because the Commissioner failed to
23 consult a vocational expert at step five of the hearing process.
24 The parties also agree that the Commissioner bore the burden of

1 showing that Butts was not disabled at step five.

2 The sole issue on appeal therefore is whether the proper
3 remedy is a remand for an evidentiary hearing or for a benefit
4 calculation. Butts does not claim that he is disabled as a matter
5 of law; rather, he argues that because there was no testimony by a
6 vocational expert, the Commissioner failed to prove that he was
7 not disabled and, therefore, he is entitled to benefits as a
8 matter of law. The Commissioner agrees that she failed to meet
9 her burden of proving that Butts was disabled but argues that the
10 district court's decision to remand for an evidentiary hearing was
11 proper.

12 a) The Five Step Procedure

13 The Social Security Act defines "disability" in pertinent
14 part as the "inability to engage in any substantial gainful
15 activity by reason of any medically determinable physical or
16 mental impairment which can be expected to result in death or
17 which has lasted or can be expected to last for a continuous
18 period of not less than 12 months." 42 U.S.C. § 423(d) (1) (A).
19 Further, the impairment must be "of such severity that [the
20 claimant] is not only unable to do his previous work but cannot,
21 considering his age, education, and work experience, engage in any
22 other kind of substantial gainful work which exists in the
23 national economy." Id. § 423(d) (2) (A). The Social Security
24 Administration has a five-step procedure for evaluating disability

1 claims. See 20 C.F.R. § 404.1520. The claimant bears the burden
2 of proving his or her case at steps one through four; the parties
3 agree that Butts has satisfied this burden; the only remaining
4 issue is the outcome of step five.

5 At step five the burden shifts to the Commissioner to "show
6 there is other gainful work in the national economy [which] the
7 claimant could perform." Balsamo v. Chater, 142 F.3d 75, 80 (2d
8 Cir. 1998) (internal quotation marks and citation omitted). See
9 also Curry v. Apfel, 209 F.3d 117, 123 (2d Cir. 2000) ("Once a
10 disability claimant proves that his severe impairment prevents him
11 from performing his past work, the [Commissioner] then has the
12 burden of proving that the claimant still retains a residual
13 functional capacity to perform alternative substantial gainful
14 work which exists in the national economy.") (internal quotation
15 marks and citation omitted; alteration in original). "In the
16 ordinary case, the Commissioner meets his burden at the fifth step
17 by resorting to the applicable medical vocational guidelines (the
18 grids)." Rosa v. Callahan, 168 F.3d 72, 78 (2d Cir. 1999)
19 (internal quotation marks and citations omitted). However,
20 "exclusive reliance on the grids is inappropriate where the
21 guidelines fail to describe the full extent of a claimant's
22 physical limitations." Id.

23 In particular, sole reliance on the [g]rid[s]
24 may be precluded where the claimant's
25 exertional impairments are compounded by
26 significant nonexertional impairments that

1 limit the range of sedentary work that the
2 claimant can perform. In these
3 circumstances, the Commissioner must
4 introduce the testimony of a vocational
5 expert (or other similar evidence) that jobs
6 exist in the economy which claimant can
7 obtain and perform.
8

9 Id. (internal quotation marks and citations omitted; alterations
10 in original). It is undisputed that Butts has both exertional and
11 nonexertional limitations. However, the ALJ relied exclusively
12 upon the grid rules to conclude that jobs exist in the national
13 economy that Butts is capable of performing. It is clear under
14 our cases that the Commissioner could have satisfied her burden at
15 step five through a vocational expert's testimony that Butts could
16 engage in other work existing in the national economy. Therefore,
17 as the parties now agree, the ALJ should have called a vocational
18 expert in step five but did not.

19 b) Standard of Review

20 In reviewing a final decision of the Commissioner, a district
21 court must determine whether the correct legal standards were
22 applied and whether substantial evidence supports the decision.
23 Machadio v. Apfel, 276 F.3d 103, 108 (2d Cir. 2002). Sentence
24 four of 42 U.S.C. § 405(g) provides that, after reviewing the
25 Commissioner's determination, a court may:

26 enter, upon the pleadings and transcript of
27 the record, a judgment affirming, modifying,
28 or reversing the decision of the Commissioner
29 of Social Security, with or without remanding
30 the cause for a rehearing.⁴
31

1 When reviewing the district court's determination as to the
2 final decision of the Commissioner "[w]e review the administrative
3 record de novo," using the same standard applied by the district
4 court. See Machadio, 276 F.3d at 108; Shaw v. Chater, 221 F.3d
5 126, 131 (2d Cir. 2000); Williams v. Apfel, 204 F.3d 48, 49 (2d
6 Cir. 1999). However, the proper standard of review regarding a
7 district court's determination of whether to remand for further
8 proceedings or for a calculation of benefits is an issue of first
9 impression in this circuit.⁵ Three circuits have ruled that the
10 appropriate standard is abuse of discretion, Nelson v. Apfel, 210
11 F.3d 799, 802 (7th Cir. 2000); Harman v. Apfel, 211 F.3d 1172,
12 1173 (9th Cir. 2000); Higgins v. Apfel, 222 F.3d 504, 505 (8th
13 Cir. 2000), while one has reviewed such decisions de novo, Seavey
14 v. Barnhart, 276 F.3d 1, 9 (1st Cir. 2001).

15 We agree with the Seventh, Eighth, and Ninth Circuits that
16 the proper standard of review is abuse of discretion. We rely
17 principally on the language of Section 405(g) in reaching our
18 conclusion.⁶ See Cmty. for Creative Non-Violence v. Reid, 490
19 U.S. 730, 739 (1989) ("The starting point for our interpretation
20 of a statute is always its language."). Sentence four of Section
21 405(g) provides district courts with the authority to affirm,
22 reverse, or modify a decision of the Commissioner "with or without
23 remanding the cause for a rehearing." 42 U.S.C. § 405(g). This
24 language clearly augments the authority of the district court by

1 granting it an additional power as to the order of remand. See
2 Harman, 211 F.3d at 1178 ("Without this additional authority, a
3 district court could not remand a case for immediate payment of
4 benefits but could only remand the case for rehearing."); Nelson,
5 210 F.3d at 801-02 (Sentence four "empowers" district courts to
6 reverse or modify without remanding). "Because Congress did not
7 state that district courts 'shall' exercise this additional power
8 but simply gave district courts the authority to do so in an
9 appropriate case, it reasonably may be inferred that the district
10 court's exercise of such authority was intended to be
11 discretionary and should be reviewed for abuse of discretion."
12 Harman, 211 F.3d at 1178. We agree with this analysis and review
13 the district court's order of remand for abuse of discretion.

14 c) The Remand

15 We now must determine whether the district court abused its
16 discretion by remanding Butts' claim for further proceedings
17 rather than for a calculation of benefits. In deciding whether a
18 remand is the proper remedy, we have stated that where the
19 administrative record contains gaps, remand to the Commissioner
20 for further development of the evidence is appropriate. See Rosa,
21 168 F.3d at 82-83. That is, when "further findings would so
22 plainly help to assure the proper disposition of [the] claim, we
23 believe that remand is particularly appropriate." Id. at 83
24 (internal quotation marks omitted). On the other hand, "where

1 this Court has had no apparent basis to conclude that a more
2 complete record might support the Commissioner's decision, we have
3 opted simply to remand for a calculation of benefits." Id.

4 For instance, in Curry the claimant was 44 years old with a
5 high school education and had been working as a plumber before his
6 injury. 209 F.3d at 119. In light of back and knee problems and
7 severe pain, his doctors stated that he could no longer work as a
8 plumber and that during an eight hour day he could sit for no more
9 than two or three hours, stand a total of only one hour, and walk
10 a total of 30 minutes. Id. at 121. After rejecting this evidence
11 as not credible, the ALJ concluded that there was no evidence that
12 the claimant could not engage in sedentary work and denied
13 disability status. Id. The district court affirmed this
14 decision, but we reversed and remanded for calculation of
15 benefits. Id. at 124. We held that because the Commissioner had
16 been unable to prove that Curry could work, "no purpose would be
17 served by our remanding the case for rehearing" and "remand for
18 the sole purpose of calculating an award of benefits [was]
19 mandated." Id. (internal quotation marks and citation omitted);
20 see also Rosa, 168 F.3d at 83 (remand for benefit calculation
21 appropriate where there was no "basis to conclude that a more
22 complete record might support the Commissioner's decision" that
23 the claimant would be classified as able to work); Balsamo v.
24 Chater, 142 F.3d 75, 82 (2d Cir. 1998); Carroll v. Sec'y of Health

1 and Human Servs., 705 F.2d 638, 644 (2d Cir. 1983).

2 In contrast, in cases where "the ALJ failed to develop the
3 record sufficiently to make" appropriate disability
4 determinations, a remand for "further findings [that] would so
5 plainly help to assure the proper disposition of [the] claim . . .
6 is particularly appropriate." Rosa, 168 F.3d at 83 (internal
7 quotation marks omitted). In Rosa, the ALJ failed to obtain
8 adequate information from the claimant's treating physician and a
9 number of other doctors and treatment facilities as to extent of
10 the claimant's injuries and consequently reached unsupported
11 conclusions. Id. We vacated the district court's affirmance of
12 the ALJ's denial of benefits and directed a remand to the
13 Commissioner for further proceedings. Id.

14 Moreover, while it is true that the Commissioner bears the
15 burden at step five, "the ALJ, unlike a judge in a trial, must
16 [her]self affirmatively develop the record in light of the
17 essentially non-adversarial nature of a benefits proceeding."
18 Pratts v. Chater, 94 F.3d 34, 37 (2d Cir. 1996) (internal
19 quotation marks omitted; alteration in original). Because Social
20 Security disability determinations are non-adversarial, "the
21 Commissioner is not a litigant and has no representative at the
22 agency level. Indeed, the model is investigatory, or
23 inquisitorial, rather than adversarial." Seavey, 276 F.3d at 8.
24 Thus, "[i]t is the ALJ's duty to investigate and develop the facts

1 and develop the arguments both for and against the granting of
2 benefits." Id. The ALJ therefore owes a duty to the Commissioner
3 as well as to the claimant.

4 Unlike Curry, where "no purpose would be served by our
5 remanding," 209 F.3d at 124 (internal quotation marks omitted),
6 the evidence in the instant case is sufficient to support a
7 finding that Butts could perform sedentary and perhaps some light
8 work. However, the ALJ failed to develop the record as to whether
9 Butts' nonexertional limitations preclude him from performing
10 other work in the national economy. Like the ALJ in Rosa, the ALJ
11 at Butts' hearing "failed to fulfill her duty," 168 F.3d at 83
12 (internal quotation marks omitted)-- in this case, by neglecting
13 to consult a vocational expert. Because the ALJ failed to call a
14 vocational expert, the record is incomplete and "further findings"
15 are appropriate "to assure the proper disposition of [the] claim."
16 Id. (internal quotation marks omitted). The district court's
17 remand for further proceedings was therefore within its
18 discretion.

19 In so holding, we note two caveats. First, a remand is
20 proper where the error is found in an ALJ's failure to apply
21 correctly the distinction between cases where reliance on the grid
22 suffices and those where the testimony of a vocational expert is
23 essential to a denial of benefits. See Rosa, 168 F.3d at 78.
24 However, were a claimant to show that Social Security ALJs reject

1 this distinction as a matter of policy and rely solely on the grid
2 in all or most similar proceedings, other remedies, including
3 judgment for the claimant, should be considered. Cf. Schisler v.
4 Heckler, 787 F.2d 76, 82, 84 (2d Cir. 1986) (SSA had "adopted a
5 formal policy of non-acquiescence in response to legal rulings of
6 Courts of Appeals with which it disagree[d]"; thus, even though
7 SSA claimed to follow a certain rule, injunction ordering SSA to
8 publish its acquiescence in that rule appropriate).

9 Also, we are mindful of the "often painfully slow process by
10 which disability determinations are made," Carroll, 705 F.2d at
11 644, and that "a remand for further evidentiary proceedings (and
12 the possibility of further appeal) could result in substantial,
13 additional delay." Curry, 209 F.3d at 124. Because, as the
14 Commissioner argues, a remand is within the discretion of a
15 district court, the principles calling for some evaluation of
16 relative hardships that govern a discretionary selection of
17 alternative remedies apply, and the hardship to a claimant of
18 further delay should be considered. For this reason, in cases
19 involving an ALJ's failure to call a vocational expert, district
20 courts that select remand as a remedy should consider imposing a
21 time limit on the subsequent proceedings. In this case, the past
22 delay is of such magnitude -- years -- that a time limit is
23 imperative. We therefore instruct the district court to direct
24 that further proceedings before an ALJ be completed within 60 days

1 of the issuance of the district court's order and, if that
2 decision is a denial of benefits, a final decision of the
3 Commissioner be rendered within 60 days of Butts' appeal from the
4 ALJ's decision. The district court's order should provide that,
5 if these deadlines are not observed, a calculation of benefits
6 owed Butts must be made immediately.

7 CONCLUSION

8 The district court's order of remand is affirmed but with
9 instructions to impose the time limits stated.

FOOTNOTES

1. Under the Social Security Act,

Limitations are classified as exertional if they affect [the] ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling Limitations or restrictions which affect [the] ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional.

20 C.F.R. § 416.969a(a). Thus, exertional limitations are "limitations and restrictions imposed by . . . impairment(s) and related symptoms, such as pain, [that] affect only [the] ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling)," 20 C.F.R. § 416.969a(b), while nonexertional limitations are "limitations and restrictions imposed by . . . impairment(s) and related symptoms, such as pain, [that] affect only [the] ability to meet the demands of jobs other than the strength demands," 20 C.F.R. § 416.969a(c). Included in the latter category of limitations is "difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching." 20 C.F.R. § 416.969a(c) (vi).

2. Sedentary work is defined by the Social Security

Administration as:

work [that] involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 404.1567(a). Light work is defined as:

work [that] involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Id. § 404.1567(b).

3. We note that, although the district court held that a vocational expert was needed, it erroneously found that Butts had no nonexertional limitations. This was based on the court's

belief that "the only non-exertional limitation identified by [Butts] in his submissions to the Magistrate Judge were 'chronic and disabling pain and fatigue.'" In fact, Butts identified nonexertional limitations such as his inability to stoop, kneel, crouch, or crawl, which are listed in 20 C.F.R. § 419.969a(c)(vi) as nonexertional limitations; the Commissioner did not dispute the existence of these limitations, and the magistrate judge accepted them. Moreover, the district court itself noted that Butts could occasionally climb or balance but could never stoop, kneel, crouch, or crawl. Thus, it is clear that Butts had nonexertional as well as exertional limitations, as both parties agree on appeal.

4. As noted, the district court remanded pursuant to sentence four of Section 405(g). Sentence six of § 405(g) also authorizes remand by providing that:

The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding

42 U.S.C. § 405(g). Sentence four remands are distinct from

sentence six remands in that "[s]entence four remands are appealable because they are part of a final judgment disposing of the action" while "[s]entence six remand orders are considered interlocutory and non-appealable, because the district court retains jurisdiction over the action pending further development and consideration by the ALJ." Raitport v. Callahan, 183 F.3d 101, 104 (2d Cir. 1999). Because sentence four does not predicate a remand on a showing of "good cause," we do not evaluate the district court's order with this criterion in mind.

5. In Williams v. Apfel, 204 F.3d 48 (2d Cir. 1999), we purported to employ de novo review in vacating the judgment of the district court and remanding with instructions that the case be remanded for further administrative proceedings rather than for a calculation of benefits. The Commissioner in Williams had found the claimant able to perform her past work and therefore never reached step five. 204 F.3d at 49. Although that determination was error, the record was entirely barren as to the degree of the claimant's disability and whether she could perform other work. Id. at 50. Williams simply held therefore that "a remand...is the appropriate remedy when an erroneous step four determination has precluded any analysis under step five." Id. Accordingly, we have never squarely confronted the issue of the proper standard of review regarding a district court's

determination among multiple appropriate remedies.

6. We note that other circuits have also relied heavily on the factors considered by the Supreme Court in Pierce v. Underwood, 487 U.S. 552 (1988), to resolve the issue in favor of the abuse of discretion standard. See Harman, 211 F.3d at 1176; Nelson, 210 F.3d at 801. Those factors are:

a) the potential for "substantial consequences" flowing from the selection between remand for payment and remand for further proceedings; b) "which judicial actor is better positioned" to determine the likely utility of further proceedings; and c) whether the remand question inherently is resistant to useful generalization.

Harman, 211 F.3d at 1176 (quoting and citing Pierce, 487 U.S. at 559-63). Because we find that the language of the statute alone supports our conclusion, we need not address the Pierce factors. Likewise, Section 405(g)'s grant of discretionary power to the district court with respect to the order of remand precludes the First Circuit's reasoning in Seavey that "the decision as to what remedy to apply under sentence four of § 405(g) is largely dictated by the type of error made by the ALJ or Commissioner . . . and therefore is not, for the most part, a matter of discretion." 276 F.3d at 9.